MONTANA LEGISLATIVE HISTORY

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Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

LC 1231

Senate BILL NO. 388

INTRODUCED BY Barr

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE IDENTIFICATION, HABILITATION AND HUMAN RIGHTS OF THE DEVELOPMENTALLY DISABLED; AMENDING SECTION 80-2312, R.C.M. 1947; AND REPEALING SECTIONS 38-301 THROUGH 38-303, AND 80-2303 THROUGH 80-2309, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. The purpose of this act is:

(1) to secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person, and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this act.

Section 2. Definitions. As used in this act:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Community-based facilities" or "community-based services" include those services and facilities which are available for the evaluation, treatment and habilitation of the developmentally disabled in a community setting, including but not limited to, outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means the district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism or any other neurologically handicapping conditions closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and

INTRODUCED BILL

environment and to raise the level of his physical, mental and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of developmental disabilities and certified by the regional mental health director, if the director is a licensed physician, by a member of the regional developmental disabilities council or board of directors, if such member is a licensed physician, or by the superintendent of the Boulder River School and Hospital or of the Eastmont Training Center, if the superintendent is a licensed physician.

(8) "Resident" means a person admitted to a residential facility for a course of evaluation, treatment or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for the purpose of evaluating, treating and habilitating the developmentally disabled on an inpatient basis, including the Boulder River School and Hospital and the Eastmont Training Center. The term does not include a group home or

foster home or a halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this act.

(10) "Respondent" means a person alleged in a petition filed pursuant to this act to be developmentally disabled and in need of developmental disabilities services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled. Whenever, in any proceeding under this act, the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian, or that the parents or guardian are unable to protect the interests of such person, or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. Only one person shall at any one time be the responsible person within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(12) "Seriously developmentally disabled" means

developmentally disabled and functioning at more than three standard deviations below the mean on a standardized intelligence test such as the Stanford Binet Scale and on a measure of adaptive behavior such as the American Association on Mental Deficiency Adaptive Behavior Scale, or because of some combination of developmental and physical disability, unable to function in a community-based setting.

Section 3. (1) Any person subject to emergency admittance to a residential facility, to examination or evaluation by a professional person, or to any hearing held pursuant to this act shall have all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill.

(2) In addition, the parents or guardian of any person alleged to be developmentally disabled and in need of developmental disabilities services have the right:

(a) to be present at any hearings held pursuant to this act;

(b) to be represented by counsel in any hearing;

(c) to offer evidence and cross-examine witnesses in any hearing; and

(d) to have the respondent be examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen

is objected to by the respondent or by a responsible person appointed by the court.

(3) A person may waive his procedural rights provided that the waiver is knowingly and intentionally made. The right to counsel in a hearing held pursuant to section 6 may not be waived. The right to habilitation provided for in this act may not be waived.

(4) In the case of a person who has been admitted to a residential facility for up to thirty (30) days of evaluation and treatment, or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any.

(5) In the case of a minor, the waiver of rights can be knowingly and intentionally made:

(a) when the minor is under the age of twelve (12), by the parents of the minor;

(b) when the minor is over the age of twelve (12), by the minor and his parents;

(c) when the minor is over the age of twelve (12) and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with the advice of

 SB388

counsel.

If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.

Section 4. (1) The parents or guardian of any person alleged to be developmentally disabled or the person himself may at any time request the assistance of a professional person in determining whether the person is developmentally disabled, the extent of such disability, and the most appropriate course of treatment, habilitation and education for the person alleged to be developmentally disabled.

(2) Whenever the parents or guardian of a person alleged to be developmentally disabled or the person himself request a course of evaluation and treatment, they shall ascertain, with the professional person who undertakes the case, the least restrictive means of evaluating and treating the person alleged to be developmentally disabled. Evaluation and treatment in a residential facility shall take place only upon certification by the professional person in charge of the case that adequate community-based facilities are not available. Residential evaluation and treatment shall not be for more than thirty (30) days without subsequent proceedings before the court.

Section 5. (1) Any person who believes that there is

a person who is developmentally disabled and in need of developmental disability services may report the situation to a professional person. If the professional person believes from the facts given to him that the person may be developmentally disabled and in need of developmental disability services, he shall contact the parents or guardian of the person alleged to be developmentally disabled or the person himself. If any of the persons so contacted refuse to cooperate with the professional person and if the professional person believes from all the circumstances of the case that the person may be developmentally disabled and in need of developmental disabilities services he shall request the county attorney to file a petition alleging that there is a person in the county who is developmentally disabled and in need of developmental disabilities services.

(2) The petition shall contain the name and address of:

(a) the professional person and any other person requesting the petition, and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent, and of any other person believed to be legally responsible for the care, support and maintenance of the respondent;

(3) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person whom the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian which shall be in conspicuous print and identified by a suitable heading.

(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is developmentally disabled and in need of evaluation and treatment. If the court finds no such probable cause it shall dismiss the petition. If the court finds that probable cause does exist it shall direct a professional person to examine the respondent and to make an inquiry concerning the circumstances of the case. Such examination shall not exceed four (4) hours in length. If probable cause is found the court may appoint a responsible person other than the respondent's parents or guardian to protect the interests of the respondent. The responsible person shall be notified as soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be mailed or delivered to the respondent and to all other

persons named in the petition and to any person who would have been named in the petition had his name, address, and relationship to the respondent been known at the time.

(4) When the professional person first contacts the respondent, before he begins any examination, he shall give the respondent a copy of the petition and explain to the respondent the nature of the proceeding and his rights as set forth in the petition. If the respondent is incapable of understanding the explanation and proceeding, the professional person shall give the petition and make the explanation to the parents or guardian of the respondent. Before making any inquiry of the parents or guardian of the respondent, the professional person shall give them a copy of the petition, explain the nature of the proceeding and their rights as set forth in the petition.

Section 6. (1) If the professional person, based on his examination and inquiry determines that the respondent is not developmentally disabled or is not in need of developmental disability services, he shall report this finding in writing to the court and the petition shall be dismissed. If the professional person concludes that the respondent is developmentally disabled and in need of developmental disability services, he shall report this conclusion to the court in writing together with his recommendations for evaluation and treatment. The report

 SB 388

shall include an explanation of the basis on which the professional person has reached his conclusion and shall include a description of any tests or evaluation devices he has employed. If the professional person's recommendation is for further evaluation and treatment, notice of this recommendation shall be sent to the respondent, his parents or guardian, the next of kin, the responsible person appointed by the court, if any, any attorney representing the respondent or his parents or guardian. If no responsible person has yet been appointed, the court may appoint one at this time.

(2) If the respondent, his parents or guardian, the responsible person, if any, or counsel for any party requests a hearing on the recommendation, the court shall set a time and place for hearing. The hearing shall be before the court without a jury. The rules of civil procedure shall apply.

(3) Prior to any hearing held pursuant to this section, the court shall appoint counsel to represent the respondent, if the respondent has not retained independent counsel. The parents or guardian shall be informed of their right to counsel and if they are indigent the court shall, on their request, appoint counsel for them. In no case shall the same attorney represent the respondent and his parents or guardian.

(4) If the hearing is waived or if the court finds, after hearing that the respondent is developmentally disabled and in need of further evaluation and treatment, the court shall order that the respondent undergo such evaluation and treatment. Evaluation and treatment ordered pursuant to this subsection shall be for no more than thirty (30) days. It shall take place in the least restrictive environment in which the necessary evaluation and treatment can be accomplished. Evaluation and treatment in a residential facility shall be ordered only if the necessary evaluation and treatment cannot be accomplished through the use of community-based facilities.

Section 7. (1) If as a result of the evaluation and treatment ordered by the court, the professional person in charge of the case recommends a course of habilitation and treatment at the community level making use of community and regional based services for the developmentally disabled, he shall report his recommendation in writing to the court. The recommendation shall be accompanied by a written report indicating the factual basis for the recommendation and describing any tests or evaluation devices which the professional person has employed in evaluating the respondent. If this course of treatment and habilitation is agreed to by the parents, guardian, person evaluated, responsible person, if any, and counsel for the person

evaluated, if any, then this community-based course of treatment shall be commenced as soon as practicable, and the petition shall be dismissed.

(2) If any of the parties listed in the preceeding paragraph object to the community-based course of treatment, they may request the court to conduct a hearing on the matter. If a responsible person has not yet been appointed, the court may appoint a responsible person prior to the hearing. Notice of the time, date and place of the hearing shall be mailed or delivered to all of the parties listed in the preceeding paragraph, and to the attorney for the parents or guardian, if any. The hearing shall be held before the court without a jury. The rules of civil procedure shall apply. If the court finds that the respondent is developmentally disabled and in need of community-based developmental disabilities services, it shall order that the respondent undertake a community-based course of treatment and habilitation.

Section 8. (1) If as a result of the evaluation and treatment either agreed to by the parents, guardian, or the person himself pursuant to section 4 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended

basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation, and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian the court shall appoint a responsible person. At the request of the respondent, his parents or guardian or the responsible person, the court shall appoint counsel for the respondent. If the parents or guardian are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

 SB388

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, and in need of developmental disabilities services but that available community-based services are adequate, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the residential facility for an extended period of treatment and habilitation, or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person.

(5) If any person is admitted to a residential facility for an extended course of habilitation without a

hearing, and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative, if it is a community-based alternative, or transfer the resident to the alternative, if it is a residential alternative. Any such transfer or release shall comply with the requirements of section 9. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in subsection 2 of this section.

Section 9. (1) No person shall be admitted to a residential facility for longer than thirty (30) days except on approval of the court. Whenever a person is admitted to a residential facility for longer than thirty (30) days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is

admitted to the residential facility. In no case shall this maximum period exceed one year.

(3) If at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the professional person in charge of the resident decides that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident, or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to such community-based alternative or transfer the resident to the other residential facility no less than fifteen (15) days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing shall comply with the procedures set forth in section 8. The court may on its own initiative inquire concerning the propriety of the release or transfer. Nothing in this subsection shall prevent the transfer of a resident to a hospital or other medical facility for

necessary medical treatment, or emergency transfer of a resident to a mental health facility, provided such emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within twenty-four (24) hours of an emergency medical or psychiatric transfer, notice shall be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(4) If the professional person in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least fifteen (15) days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the future habilitation plan which is anticipated by the professional person.

(5) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the

SB 358

recommendation. The hearing shall be conducted in the manner set out in section 8. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based habilitation, or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition. If the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a residential facility which does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility.

Section 10. Hearings held pursuant to this act shall be held in the district court for the district where the respondent resides. Except that at the request of any party, or the professional person who must be present at the hearing, a hearing may be held in the district court for the

district where the respondent is undergoing evaluation, treatment or habilitation in a residential facility, or is undergoing community-based evaluation, treatment or habilitation. The cost of any hearing held pursuant to this act shall be born by the county where the respondent resides.

Section 11. Any order issued by a court after a hearing held pursuant to any provision of this act may be appealed to the Montana supreme court in the same manner as for civil appeals generally.

Section 12. Whenever evaluation by a professional person is ordered by a court pursuant to any provision of this act, the person being evaluated, his parents or guardian shall have a reasonable choice of a professional person qualified to perform such service.

Section 13. In any hearing held pursuant to this act which involves consideration of the recommendation and report of a professional person, the professional person who made the recommendation and report shall be present at the hearing and subject to cross-examination.

Section 14. In any hearing held pursuant to this act the court may request the county welfare department to prepare a social summary of the respondent for use by the court.

Section 15. No person who has reached the age of

majority shall be compelled against his will to undertake a course of treatment and habilitation solely because he is developmentally disabled, but only if such disability causes him to be unable to protect his life and health.

Section 16. The parents, guardian, the person himself, or a professional person may admit a person believed to be developmentally disabled to a residential facility on an emergency basis when necessary to protect the person from death or serious bodily harm. However, if requested by the parents, guardian or the person admitted on an emergency basis, a petition as set out in section 5 shall be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the professional person assigned by the court to conduct the examination and inquiry shall report back to the court on the next judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility shall be allowed only on order of the court when necessary to protect the respondent from death or serious bodily harm. In no case shall an emergency admission to a residential facility continue for longer than thirty (30) days without subsequent proceedings before the court.

Section 17. (1) Unless specifically stated in an order by the court, a person admitted to a residential

facility for an extended course of habilitation shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for habilitation, evaluation or care.

(2) Whenever any person is admitted to a residential facility for a period of more than thirty (30) days, for an extended course of habilitation, the court ordering the admission may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section shall terminate upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) Any person who has been admitted to a residential facility pursuant to this act shall be automatically restored upon the termination of the admission to all of his civil and legal rights which may have been lost when he was admitted. This subsection shall not affect, however, any guardianship or conservatorship created independently of the

 SB 388

admission proceedings, according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Any person who leaves a residential facility following a period of evaluation and habilitation shall be given a written statement setting forth the substance of this subsection.

(4) Any person admitted to a residential facility prior to the effective date of this act shall enjoy all the rights and privileges of a person admitted after the effective date of this act.

Section 18. (1) If a person is admitted to a residential facility under the provisions of this act and is eligible for hospital care, treatment or habilitation by an agency of the United States, and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Boulder River school and hospital with respect to detention, custody, transfer and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to

inquire into the mental condition of persons so admitted, and to determine the necessity for continuance of their admission.

(2) Consistent with other provisions of this act, a person admitted to a residential facility under this act for a period more than thirty (30) days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to a residential facility located outside the state, if the out-of-state facility agrees to receive the person, provided, however that no such commitment or transfer shall be for a longer period of time than is permitted within the state. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons admitted to a residential facility under the provisions of this act out of Montana or under the laws of another jurisdiction into Montana shall be governed by the provisions of the interstate compact on mental health.

Section 19. No person admitted to or in a residential facility shall be fingerprinted unless required by other provisions of law.

Section 20. (1) A person admitted to a residential facility may be photographed upon admission for

identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court.

Section 21. Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents shall have a right to dignity, privacy and humane care.

(2) Residents shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the facility to foster the exercise of this right by furnishing the necessary materials and assistance.

(3) Residents shall have the same rights and access to private telephone communication as patients at any public hospital, except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed semiannually if any restrictions are to be continued. Residents shall have an unrestricted right to visitation,

except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed semiannually if any restrictions are to be continued.

(4) Residents shall have a right to receive suitable educational services regardless of chronological age, degree of retardation or accompanying disabilities or handicaps.

(5) Each resident shall have an adequate allowance of neat, clean, suitably fitting and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the resident's throughout his stay in the institution. Clothing both in amount and type shall make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(6) Each resident shall have the right to keep and use his own personal possessions except insofar as such clothes or personal possessions may be determined to be dangerous,

either to himself or to others, by a professional person.

(7) A resident has a right to a humane physical environment within the residential facilities. These facilities shall be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) Regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean and attractive condition shall be developed and implemented.

(b) Pursuant to an established routine maintenance and repair program, the physical plant shall be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety and well-being of the residents and so as not to impede in any manner the habilitation programs of the residents.

(c) The physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility shall meet such provisions of the life safety code of the national fire protection association as are applicable to it.

(d) There must be special facilities for nonambulatory residents to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory residents to

communicate their needs to staff.

(8) Residents shall have a right to receive prompt and adequate medical treatment for any physical ailments and for the prevention of any illness or disability. Such medical treatment shall meet standards of medical practice in the community.

(9) Corporal punishment shall not be permitted.

(10) The opportunity for religious worship shall be accorded to each resident who desires such worship. Provisions for religious worship shall be made available to all residents on a nondiscriminatory basis. No individual shall be compelled to engage in any religious activities.

(11) Residents shall have a right to a nourishing, well-balanced diet. The diet for residents shall provide at a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the resident, or his parents or guardian or next of kin, or the responsible person appointed by the court, in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(12) Residents shall have a right to regular physical exercise several times a week. It shall be the duty of the facility to provide both indoor and outdoor facilities and

equipment for such exercise. Residents shall have a right to be outdoors daily in the absence of contrary medical considerations.

(13) Residents shall have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex, except where a professional person responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons therefor.

Section 22. (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education and care, suited to their needs, regardless of age, degree of retardation or handicapping condition. Each resident has a right to a habilitation program which will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residence;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within fourteen (14) days of his admission to a residential facility, each resident shall have an evaluation by appropriate specialists for programming purposes.

(4) Each resident shall have an individualized habilitation plan formulated by the facility. This plan shall be developed by appropriate professional persons and implemented as soon as possible but no later than fourteen (14) days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this act, shall commence promptly upon the resident's admission. Each individualized habilitation plan shall contain:

(a) a statement of the nature of the specific limitations and specific needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of, and an explanation for, the plan

SB388

of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professional persons and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, including criteria for discharge and a projected date for discharge.

(5) As part of his habilitation plan, each resident shall have an individualized post-institutionalization plan. This plan shall be developed by a professional person who shall begin preparation of such plan upon the resident's admission to the institution and shall complete such plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, shall be consulted in the development of such plan and shall be informed of the content of such plan.

(6) In the interests of continuity of care, one professional person shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program,

and recording the resident's progress as measured by objective indicators. This professional person shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. In addition, six months after admission and at least annually thereafter, each resident shall receive a comprehensive psychological, social, educational and medical diagnosis and evaluation, and his habilitation plan shall be reviewed by an interdisciplinary team of no less than two professional persons and such resident care workers as are directly involved in his habilitation and care.

(8) Each resident discharged to the community shall have a program of transitional habilitation assistance.

(9) The professional person in charge of the residential facility shall report in writing to the parents or guardian of the resident, or the responsible person, at least every six months on the resident's educational, vocational and living skills progress and medical condition. Such report shall also state any appropriate habilitation program which has not been afforded to the resident because of inadequate habilitation resources.

(10) The parents or guardian of each resident, or the responsible person appointed by the court, shall promptly upon resident's admission receive a written copy of all the above standards for adequate habilitation. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy.

Section 23. Complete records for each resident shall be maintained and shall be readily available to professional persons and to the resident care workers who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records shall be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if such resident is capable of giving informed consent, or by his parents or guardian or the responsible person, shall be permitted access to the resident's records. These records shall include:

(1) identification data, including the resident's legal status;

(2) the resident's history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior institutionalization;

(3) The resident's grievances if any;

(4) An inventory of the resident's life skills;

(5) A record of each physical examination which describes the results of the examination;

(6) A copy of the individual habilitation plan and any modifications thereto and an appropriate summary which will guide and assist the resident care workers in implementing the resident's program;

(7) The findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;

(8) A copy of the post-institutionalization plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) A medication history and status;

(10) A summary of each significant contact by a professional person with a resident;

(11) A summary of the resident's response to his program, prepared by a professional person involved in the resident's habilitation and recorded at least monthly. Such

 SB388

response, wherever possible, shall be scientifically documented.

(12) A monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(13) A signed order by a professional person for any physical restraints;

(14) A description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of residents mistreatment;

(15) A summary of family visits and contacts;

(16) A summary of attendance and leaves from the facility;

(17) A record of any seizures, illnesses, treatments thereof, and immunizations.

Section 24. Each professional person employed by a residential facility shall meet all licensing and certification requirements promulgated by the state of Montana for persons engaged in private practice of the same profession elsewhere in Montana. Other staff members shall meet the same licensing and certification requirements as persons who engage in private practice of their specialty

elsewhere in Montana. All resident care workers who have not had prior clinical experience in a residential facility for habilitation of the developmentally disabled shall have suitable orientation training. Staff members on all levels shall have suitable, regularly scheduled in-service training. Each resident care worker shall be under the direct professional supervision of a qualified staff member.

Section 25. Every residential facility shall prohibit mistreatment, neglect or abuse in any form of any resident. Alleged violations shall be reported immediately to the professional person in charge of the facility and there shall be a written record that:

(1) each alleged violation has been thoroughly investigated and findings stated;

(2) the results of such investigation are reported to the professional person in charge of the facility within twenty-four (24) hours of the report of the incident. Such reports shall also be made to the mental disabilities board of visitors monthly and to the developmental disabilities advisory council at its next scheduled public meeting. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.

Section 26. (1) Residents of a residential facility shall have a right not to be subjected to any unusual or

hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent specialists and legal counsel. Such proposed procedures shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought.

(2) Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. Restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint shall be applied only if alternative techniques have failed and only if such restraint imposes the least possible restriction consistent with its purpose. Only a professional person may authorize the use of restraints. Orders for restraints by a professional person shall be in writing and shall not be in force for longer than twelve (12) hours. Whenever physical restraint is ordered suitable provision shall be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room, shall not be employed. Legitimate "time out" procedures may be utilized under close and direct

professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli shall be reviewed and approved by the mental disabilities board of visitors and shall be conducted only with the express and informed consent of the affected resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs shall be conducted only under the supervision of and in the presence of a professional person who has had proper training in such techniques.

(5) No resident shall be subjected to a behavior modification program designed to eliminate a particular pattern of behavior without prior certification by a physician that he has examined the resident in regard to behavior to be extinguished and finds that such behavior is not caused by a physical condition which could be corrected by appropriate medical procedures. No resident shall be subjected to a behavior modification program which attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

SB388

(6) Electric shock devices shall be considered a research technique for the purpose of this act. Such devices shall only be used in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of such devices shall be subject to the conditions prescribed by this act for experimental research generally and shall be used only under the direct and specific order of the professional person in charge of the residential facility.

Section 27. Residents of a residential facility shall have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health,

education and welfare for projects supported by that agency.

Section 28. The following rules shall govern resident labor:

(1) No resident shall be required to perform labor which involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(2) No resident shall be involved in the care (feeding, clothing, bathing), training or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(3) Residents may be required to perform vocational

training tasks which do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than three months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(5) If any resident performs habilitative labor which

involves the operation and maintenance of a facility, but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature such as the making of one's own bed.

(7) Residents shall be allowed to use a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing shall be sufficient so that the facility is not dependent upon the use of residents or volunteers for the care, maintenance or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work.

Section 29. Within one (1) year of the effective date of this act, each resident governed by the provisions of this act shall be evaluated as to his mental, emotional, social, and physical condition. Such evaluation or reevaluation shall be conducted by an interdisciplinary team

SB388

of professional persons who shall use professionally recognized tests and examination procedures. Each resident's parents or guardian, next of kin or legal representative or the responsible person appointed by the court shall be contacted and his readiness to make provisions for the resident's care in the community shall be ascertained. Each resident shall be returned to his family, if adequately habilitated, or assigned to the least restrictive habilitation setting. Where necessary, the professional person in charge of the resident shall petition the court to appoint a responsible person.

Section 30. No person shall be admitted to any publicly supported residential institution caring for developmentally disabled persons unless such institution meets the standards prescribed by this act.

Section 31. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five (5) persons at least three (3) of whom shall not be professional persons and at least one (1) of whom shall be a representative of an organization concerned with the care and welfare of the developmentally disabled. No one may be a member of the board who is an agent or employee of the department of institutions or of any residential facility affected by this act. If a board of similar title and structure is created in any act concerning the treatment of

the mentally ill, then one (1) board shall be created to perform the functions set out in both acts and the board so created shall include at least one (1) representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this act.

The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare. No experimental research project involving persons admitted to any residential facility affected by this act shall be commenced unless it is approved by the mental disabilities board of visitors. The board shall investigate all cases of

alleged mistreatment of a resident.

(3) The board shall, at least annually, inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(4) The board shall inspect the file of each person admitted to a residential facility pursuant to this act to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation or other extraordinary measures.

(5) The board may assist any patient at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(6) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the parents or guardian of any patient involved, the next of kin, if known, the responsible person appointed by the court for any patient

involved, the professional person in charge of the facility, the director of the department of institutions and the district court which has jurisdiction over the facility.

(7) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the Montana legislature concerning the status of the residential facilities and habilitation programs which it has inspected.

(8) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this act.

Section 32. If any person is a patient in a mental health facility and the professional person in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be admitted to a residential facility, then the professional person shall commence proceedings consistent with the procedures set forth in this act for admissions generally to effect such admission.

Section 33. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the

SB388

provisions of this act are declared to be severable.

Section 34. Section 80-2312, R.C.M. 1947, is amended to read as follows:

"80-2312. Supervision of Glendive center--transfers to Boulder river school and hospital. The department shall establish and direct the services to be provided at the center. The department shall provide for temporary transfers from the Eastmont training center to the Boulder river school and hospital for special medical, psychological, surgical, and other services consistent with the statutory requirements for transfer of a resident to a different residential facility."

Section 35. Sections 80-2303 through 80-2309, and 38-301 through 38-303, R.C.M. 1947, are repealed.

-End-

1975 Senate

4

44th LEGISLATIVE SESSION

COMMITTEE ON JUDICIARY

SENATE BILL NO.	ENTERED COMM.	DATE CONSIDERED	OUT OF COMM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMEND. DATE	BE CONCURRED IN DATE	BE CONC. IN AS AMENDED DATE	BE NOT CONCURRED IN DATE
274	1/29/75	2/18/75	2/24/75			2/24/75			
276	1/27/75	2/5/75	2/5/75	2/5/75					
283	1/27/75	2/11/75	2/18/75			2/18/75			
287	1/27/75	2/6/75	2/6/75		2/6/75				
288	1/27/75	2/6/75	2/6/75		2/6/75				
294	1/29/75	2/4/75	2/4/75			2/4/75			
314	1/30/75	2/13/75	2/21/75			2/20/75			
339	1/31/75	2/7/75	2/10/75			2/8/75			
348	1/31/75	2/12/75	2/12/75			2/12/75			
356	2/1/75	2/11/75	2/21/75			2/21/75			
377	2/6/75	2/19/75	2/24/75			2/22/75			
388	2/7/75	2/19/75	2/24/75			2/22/75			
389	2/7/75	2/17/75	2/24/75			2/22/75			
390	2/10/75	2/21/75	died in committee						
393	2/7/75	2/20/75	2/26/75			2/24/75			
400	2/10/75	2/17/75	2/24/75			2/22/75			
402	2/24/75	2/25/75	2/26/75			2/25/75			

MINUTES OF THE MEETING
JUDICIARY COMMITTEE
February 19, 1975

The meeting was called to order by Senator Towe, Chairman, at 9:43 a.m. in Room 405 of the Capitol Building.

The following bills were discussed:

SB 377
SB 388

Senator Roberts assumed the chair while Senator Towe presented the bills.

SB 377 --- and 388 Senator Towe, District 34, and sponsor of the bills, stated the purpose of the bills is to provide progressive and comprehensive committment procedures for the mentally ill and developmentally disabled. The bills provide for committment procedures including petition, court hearings, and time tables for committment with right of hearing and review. The bills provide for right of hearing and review. The bills provide for right to treatment and procedural rules. Right to counsel cannot be waived; responsible person designation, consent to experimental treatment and therapy, protection of privacy are all vital portions of the bills. An emergency procedure is included in SB 377. A Visitors Board composed of five people appointed by the Governor consisting of 2 professionals and 3 lay persons will be attached to but not under the control of, any department. The board of Visitors will be charged with reviewing the treatment plan for each individual in the institutions and insuring the rights of those individuals.

Pat Melby, representing the Governor's Office, expressed support for the bill, and stated the basic policy of Governor Judge's administration is that the residents of the state's institutions should receive the level of treatment they are legally and morally entitled to and they are afforded the due process of law when they are deprived of their liberty. He cited an example of a six-day old Down's Syndrome baby being committed to Warm Springs as being a flagrant case of denial of rights.

John Delaney, Administrator of Warm Springs State Hospital, stated he agreed with Mr. Melby's remarks and wholeheartedly supports the bill.

Jan Brown, representing the Montana Mental Health Association and the Montana Association of Churches presented her written testimony to the Committee (attached).

Dr. Byrce Hughett, Billings Mental Health Center, stated his support of the bill and noted he had presented some suggested amendments to Senator Towe.

Dan Hahr, Billings Mental Health Center, stated the bills have been thoroughly reviewed by the Mental Health Council and they are in full support. He stated he was very impressed with the section dealing with the rights of patients.

Jerry Wendorf, representing the Montana Medical Association, stated that group's support for H.B. 377.

Tom Honzel, representing the Montana County Attorneys Association, stated current committment procedures are barbaric. In December the Association met with 30 county attorneys present and voted full support for the bills.

Nick Rotering, staff attorney for the Department of Institutions, strongly supported the bills on behalf of the Department. He stated they make good legal and medical sense.

Gregory Jacobs, representing Warm Springs State Hospital, presented his written testimony to the Committee (attached).

Ellen Garrity, representing the Montana Association of University Women, supported the bill as a step forward in the rights of fellow human beings.

Ken Rohyans, representing Region IV Progress, Inc., a regional facility for training adult retarded, spoke in support of the bills citing the need for humane and progressive committment procedures. He presented examples of gross abuse of committment procedures and stated these are not at all unusual.

JoAnn Willis, representing the Montana Association for Retarded Citizens, expressed that group's support for the bill citing the review procedures, right to treatment, and rights of the patients.

Jerry Butcher, acting Superintendent of Boulder River School and Hospital supported the bills and presented his written testimony to the Committee (attached).

Richard Swenson, a psychologist at Boulder River School and Hospital, stated his support of the bill. He requested opportunity of presenting some amendments to the Committee regarding the Board of Visitors and review of behaviors.

Roger Ogren representing the Coalition for the Rights of the Retarded, stated that group's overwhelming support of the bills and called them exemploary legislation. He also requested an opportunity to discuss some minor amendments.

Gary Pagnatta, representing the Coalition for the Rights of the Retarded, and also an employee of Boulder River School and Hospital, supported the bill with minor amendments.

Pete Berdack, a social worker for Social and Rehabilitation Services asked support for the bill noting there may be some contradictions with the Protective Services Act that should be looked into.

Archie McPhail, psychologist at Warm Springs State Hospital, asked that the definition on page 3 be included in line 11, page 41. He supported the voluntary committment procedure.

Darrell Ophimer, representing the Montana Practical Nurses Association, expressed that group's support of the bills but asked that enabling legislation be considered to provide a training program oriented to the rights of patients. He stated instructors have such a heavy load now that a new program is most necessary.

Ben Alexander, psychiatrist at Warm Springs State Hospital, presented his written testimony to the Committee (attached).

Dr. McCarthy, Warm Springs State Hospital, presented his written testimony to the Committee (attached).

PONENTS

Dr. Camilla Anderson, retired psychiatrist from Sidney stated she agrees with the philosophy of the bill (S.B. 377) but has questions concerning

grouping under injury and danger, prefers two separate bills -- one for committment and one for treatment, and paranoid orientation. She stated she would like to meet with the sub-committee concerning the bills.

Ray Gulick, a public lobbyist, stated he felt the bills were ambiguous, costly, and don't take into consideratio the administrators who must have freedom and money to operate.

Ronald Johnston - Billings, stated he was a victim of the present committment laws, as he was falsely declared insane, falsely arrested, and his family shattered He is disturbed by the new label "developmentally disturbed" and stated he is writing a book about his experiences. He felt this was an area for God to oversee, not for human dictates. He urged the Committee to oppos the bills.

In closing, Senator Towe related his experiences in researching the bills. He stated he felt the provisions of bills are workable and that community resources should fill in the broad areas outside "injury to one's self or danger to others".

Senator Greely announced a committment bill subcommittee meeting will be held Thursday, Feb. 20, at 11:00 a.m. in Room 442.

There being no further business the meeting adjourned to reconvene Thursday, February 20, at 9:30 a.m.

Thomas E. Towe

Chairman

ROLL CALL

Judiciary COMMITTEE

44th

~~SECOND HALF~~ - ~~43rd~~ LEGISLATIVE SESSION 1975

NAME	PRESENT	ABSENT	EXCUS
Thomas E. Towe	X		
Joe R. Roberts	X		
V. E. Cetrone	X		
Margaret S. Warden	X		
Robert J. Brown	X		
Glen L. Drake	X		
Jean A. Turnage	X		
Michael Greely	X		

NAME: Pat Melby DATE: 2-19-75

ADDRESS: 235 Capitol

PHONE: 447-3084

REPRESENTING WHOM? Governor's Office

APPEARING ON WHICH PROPOSAL: S.B 301 and S.B 388

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: Donald L. Harr DATE: 2-14-75

ADDRESS: 1532 Ave. D Billings, Montana

PHONE: 259-1725

REPRESENTING WHOM? Private psychiatrist & member Mental Health Advisory Council

APPEARING ON WHICH PROPOSAL: SB 327 SB 388

DO YOU: SUPPORT? ✓ ✓ AMEND? _____ OPPOSE? _____

COMMENTS: Certain suggest wording amendments have been presented to Senator Towe prior to committee hearing.

NAME: Nick A. RoTeRiNg DATE: Feb. 19, '75

ADDRESS:

PHONE: 449- 2546

REPRESENTING WHOM? DepT. OF INSTITUTIONS

APPEARING ON WHICH PROPOSAL: SB 377, SB 388

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS:

NAME: Ellen Garrity DATE: Feb. 19

ADDRESS: 1925 Highland

PHONE: 2-9951

REPRESENTING WHOM? Mont Division Am. Association of University Women

APPEARING ON WHICH PROPOSAL: SB 377 - 3rd

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: We support this bill as a step in the right direction toward helping our fellow humans.

NAME: Kermit A Rokyome DATE: 19 Feb 74

ADDRESS: 1204 Lawrence Helena

PHONE: 458-9131

REPRESENTING WHOM? Region IV, Progress Inc

APPEARING ON WHICH PROPOSAL: SB 305

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: _____

NAME: Gerald F. Gilchrist DATE: 3/19/72

ADDRESS: Boulder River School & Hospital, Boulder, Mont.

PHONE: 225-3311

REPRESENTING WHOM? Boulder River School & School & Hospital

APPEARING ON WHICH PROPOSAL: SB 345

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: I question the diagnosing of a professional person being certified by a licensed physician. I feel that if this bill is adopted that proper funding and staffing must be provided for the institutions, as well as proper funding for Community Services. I feel that the bill is in line with the goals of the institution and Community programs to deprogram to institutions and provide services in the Community. These persons in institutions should have the rights and habilitative services outlined in the bill.

NAME: Richard Swenson DATE: _____

ADDRESS: ~~Box~~ 1527 Choteau Helena

PHONE: 442-2064

REPRESENTING WHOM? Boulder River School

APPEARING ON WHICH PROPOSAL: 388

DO YOU: SUPPORT? _____ AMEND? X OPPOSE? _____

COMMENTS: ~~3~~ Several of us at BRSH would like to sit down with the subcommittee & change some of the language.

NAME: Roger Owen DATE: 2/19/75

ADDRESS: BRS&H

PHONE: 406-225-3311 ext 214

REPRESENTING WHOM? Coalition for the Rights of the Retarded

APPEARING ON WHICH PROPOSAL: SB 388

DO YOU: SUPPORT? ~~[redacted]~~ AMEND? ~~[redacted]~~ OPPOSE? _____

COMMENTS: Certain changes in the definition of "Professional Person" should be made. Otherwise, this is exemplary legislation

NAME: Gary Pagnotta DATE: 2/15/95

ADDRESS: 87 Box [redacted] Boulder

PHONE: 225-3315

REPRESENTING WHOM? Coalition for Rights of the Retarded

APPEARING ON WHICH PROPOSAL: SB 388

DO YOU: SUPPORT? ✓ AMEND? _____ OPPOSE? _____

COMMENTS: [redacted] Would like to meet with author of Bill or Committee to discuss Possible changes ex. Professional person being designated ultimately to licensed Physicians?

NAME: Janice Fiscl DATE: 2-19-15

ADDRESS: Box 87, Boulder

PHONE: 225-3311 - Ext 279

REPRESENTING WHOM? Boulder River School

APPEARING ON WHICH PROPOSAL: 388 & 377

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? _____

COMMENTS: These are necessary bills to protect the rights of people in this state. Homes working with this situation daily I would like to help make the law more effective [redacted] to meet the need it is trying to serve

NAME: Thomas L. Jacobsen DATE: 2/15/75

ADDRESS: 326 Main Lane
Billings, Montana

PHONE: _____

REPRESENTING WHOM? _____

APPEARING ON WHICH PROPOSAL: SB 377 + 388

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE? ✓

COMMENTS: _____

1925 house

JUDICIARY COMMITTEE

44th Legislature

Bill No.	Subject Matter	Date In	Sponsor	Hearing Date	Committee Action	Date Out
SB 274	Authorizing the creation of community-based centers for rehabilitating criminal offenders.	3/4/75	Towe	3/18/75	AS SO AMENDED BE CONCURRED IN	3/21/75
SB 377	To provide for determination & treatment of seriously mentally ill & those suffering from mental disorders.	3/4/75	Towe	3/15/75	BE CONCURRED IN	3/21/75
SB 388	To provide for the identification, habilitation & human rights of the developmentally disabled.	3/4/75	Towe	3/15/75	BE CONCURRED IN	3/21/75
SB 393	To change the consumer counsel committee into a committee for the protection of citizen's rights; expanding membership, responsibilities & authorizing, etc.	3/4/75	Towe	3/10/75	AS SO AMENDED BE CNOT CONCURRED IN	3/14/75
SB 402	"The judicial office campaign finance act" to provide a method of public financing of judicial campaigns; increasing attorneys' license tax, etc.	3/4/75	Roberts	3/8/75	AS SO AMENDED BE CONCURRED IN	3/17/75
SB 404	To remove requirement for a primary election for judicial officers when the number of candidates contesting in primary is same, etc.	3/4/75	Lynch	3/7/75	BE NOT CONCURRED IN	3/10/75

JUDICIARY COMMITTEE

March 15, 1975

The sixty seventh meeting of the House Judiciary Committee was called to order in Room 436 of the Capitol Building at Helena, Montana on Saturday, March 15, 1975 at 9:05 AM. Representativ Herb Huennekens, Chairman, presided. All members were present except Representatives Moore, Kimble, Meloy, Scully and Vincent, absent, excused.

Bills scheduled for hearing this date were Senate Bills No. 112, 377, 388 and 221, and were heard in this order.

SENATE BILL NO. 112 Senator John W. Devine, District #19, is chief sponsor of the bill. Representative Dennis Leste taking the place and testifying for Senator Devine, stated this is a simple bill raising the requirement of financial responsibility. It is similar to his bill except that it raises the limits even higher.

No proponents. No opponents. No closing. Following brief discussion of limits as insurance is written now, during which Boyce Clark stated they wouldn't write anything for less than 25, 50 now, the hearing was closed.

SENATE BILLS NOS. 377 & 388 Senator Thomas Towe, District #34, chief sponsor, requested that these bills be heard simultaneously.

Chairman Huennekens imposed a time limit of forty minutes to each side and if there is unused time will allow additional testimony.

Senator Towe stated these are the commitment procedures bills, SB 388 relates to the mentally retarded commitment to Boulder, SB 377 relates to commitment procedures at Warm Springs. Each bill: 1) Reforms process for commitment, updates and revises rights of those committed; 2) Guarantees the right of treatment and rights of individual; 3) Sets up a board of visitors who will have an opportunity to review to be sure everyone is being treated fairly.

In the definition on page 4 of SB 377 the most important sentence is "no person may be admitted because he is" (and these are listed under 1, 2 and 3.) Mere senility is not cause to have someone committed to Warm Springs. The state has an obligation to those people.

The definition on page 5 of SB 388 of a person mentally retarded which is "developmentally disabled" in other words means he cannot get along in some other facility. The definitions are changed, are more restrictive and will be more beneficial.

The bills provide for a four hour commitment procedure which goes through the county attorney, a petition, doctors, an examination and these are the first steps. An individual can be detained for seventy two hours. If seriously ill he can get a three month commitment. Bill calls for renewal every year, no open ended commitment. There must be an attorney, a waiver and hearing must be held before a three month commitment. The bills provide for a large number of rights that are guaranteed. On page 9 in SB 377 the "right that an individual has to have professional person of his own choosing is included. On page 5 of SB 388 the rights are similar. If a person commits himself he must be released on request after five days.

Senator Towe stated that these bills have been worked out with county attorneys, the judiciary, psychiatrists and are supported generally by all organizations that he is aware of.

Part II of the bill provides the right of treatment and a treatment plan is required for every person. The bills include a provision for confidentiality.

Proponent Pat Melby, a staff attorney in the Governor's office, stated the basic philosophy is residents of state institutions should receive level of care they are entitled to by the constitution. He cited examples of why these bills are needed.

Proponent John Delaney, administrator at Warm Springs, spoke in favor of SB 377 and stated it does all the things Senator Towe and Pat Melby have discussed. It repeals all of current statutes in existence, present ones are archaic and barbaric.

Proponent Jerry Loendorf, representing the Montana Medical Association, supported the bills (see prepared statement). Jack Brown, representing the Montana Mental Health Association and the Association of Churches, stated they support the concepts of these bills and left prepared statements.

Proponent Tom Honzel, representing the Montana County Attorneys Association, stated present laws are archaic and barbaric, a number of counties have developed their own procedures. These procedures are somewhat similar to what is in these bills. The bills do protect individuals' rights quite adequately.

Proponent Eugene Huntington, representing Nick Rotering and the Department of Institutions, stated they support this bill and they have had input into the bill. Proponent Dr. Wm. Alexander M.D., a psychiatrist at Warm Springs State Hospital, stated the bill is long overdue and they should help a great deal. He is worried about the seventy two hour evaluation because have only five community mental health centers in the state and they are not well staffed.

Proponent Jerry Butcher, acting superintendent at Boulder River School and Hospital, stated he hopes this bill will be passed.

Other proponents in support ot these bills were Dr. Richard Swensen from BRS&H, Roger Ogrin, representing a coalition, Joan Willis, representing people who are citizens, and Rosemary Zion, representing herself. Ms. Zion stated she had drafted these bills and wishes to verify what Senator Towe had said in his testimony.

Opponent Ray Gulick from Joplin, Montana stated h would like to bring up the subject of when you are declared incompetent Feels it should be taken into consideration that perhaps the family is pushing for commitment for devious reasons.

Opponent Dr. Camille Anderson who stated she was an old line psychiatrist from Sidney, Montana, opposed the bill in great detail and length (see prepared testimony).

No other opponents. Senator Towe, in closing, stated he had spent a great deal of time visiting with Dr. Anderson an that they have a basic difference in philosophy. He stated this bill addresses itself to those persons we want to push into Warm Springs. He also elaborated on the seventy two hour treatment which is guarante in all cities.

Questions from committee members centered around the seventy two hour procedure. Much concern was expressed regarding available facilities in certain portions of the state and Senator Towe reassured committee members by explaining the procedures as enlisted in the bill that this wouldn't be such a cumbersome problem.

Hearing on this bill was closed at 10:45 AM.

SENATE BILL NO. 221 The committee did not have a quorum at the begining of this hearing but it was understood with Senator Drake and those from out of town who wish to testify that another hearing would be held at a later date. Ultimately, a quorum was present and this was considered the hearing on the bill.

Senator Glenn L. Drake, District #16, is chief sponsor of this no-fault proposal. He stated there are amendments whi are being proposed to the bill. The problem is in paying for it and how do you get this benefit without drastically increasing cost. SB 2 addresses the problem differently than the "mandatory threshold" approach and one way is by reducing judgement by amount the person has received in benefits. Bill prohibits double recovery. The amendment on the bottom of page 1 limiting tort actions addresses principal problem on the theory it is cheaper for an insurance company to pay something than try to defend the case.

Montana Association of Churches

ROCKY MOUNTAIN COLLEGE
Kimball Hall

1511 Poly Drive
Billings, Montana 59102

MONTANA RELIGIOUS LEGISLATIVE COALITION

Box 404
Helena, Montana 59601

RKING TOGETHER:

American Baptist Churches
f the Northwest

merican Lutheran Church
ocky Mountain District

Christian Church
Disciples of Christ)
n Montana

piscopal Church
)iocese of Montana

Lutheran Church
n America
Pacific Northwest Synod

oman Catholic Diocese
f Great Falls

oman Catholic Diocese
f Helena

nited Church
f Christ
ontana Conference

ited Presbyterian Church
acier Presbytery

ited Methodist Church
ellowstone Conference

March 15, 1975

TO THE HOUSE JUDICIARY COMMITTEE :

As the legislative liaison for the Montana Association of Churches, I urge your support of Senate Bills 377 and 388.

The Montana Association of Churches, representing eleven church bodies in our state, has not had a task force studying these two bills and, therefore, has not officially voted to support them.

However, the Montana Association of Churches has had a task force studying Montana's institutions and has carried out an extensive public education campaign entitled "Us and Them," regarding our institutions. M.A.C. is also concerned with human rights and the dignity of all persons, which Senate Bills 377 and 388 help to protect.

I therefore express the Montana Association of Churches' support of the concepts embodied in Senate Bills 377 and 388.

Thank you for your favorable consideration of these bills.

Sincerely,

Jan Brown

Jan Brown
LEGISLATIVE LIAISON

STATE OF MONTANA

Office of the Governor

Thomas L. Judge
Governor

Budget and Program Planning

Keith L. Colbo
Director

Capitol Building · Helena, Montana 59601

September 26, 1974

MEMORANDUM

TO: Michael G. Billings, Director

FROM: Pat Melby, Staff Attorney PEM

SUBJECT: Standards for Institutions for the Mentally Handicapped

Attached is a copy of the court ordered standards from the case of Wyatt v. Stickney.

The standards for Bryce and Searcy Hospitals (Alabama's institutions for the mentally ill) are found at 344 F. Supp. 373 and the standards for Partlow State School and Hospital (Alabama's institution for the mentally retarded) are found at 344 F. Supp. 387.

I would suppose that similar standards would be imposed on Warm Springs State Hospital and Boulder River School and Hospital by federal courts if right to treatment suits were brought against those institutions.

PEM/cd

NAME Roger Ogden Bill No. SB 388

ADDRESS Boulder, MT Date 3/15/75

WHOM DO YOU REPRESENT? Coalition for the Rights of the Retarded

SUPPORT X OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

This is exemplary legislation. Full implementation of this combined with the Developmental Desabilities Act (adequately funded) should place Montana in full compliance with current federal guidelines and regulations.

SENATE BILL NO. 388

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE IDENTIFICATION, HABILITATION AND HUMAN RIGHTS OF THE DEVELOPMENTALLY DISABLED; ~~AMENDING SECTION 80-2312, R.C.M. 1947;~~ AND REPEALING SECTIONS 38-301 THROUGH 38-303, AND 80-2303 THROUGH 80-2309, AND 80-2312, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. The purpose of this act is:

(1) to secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person, and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this act.

Section 2. Definitions. As used in this act:

(1) "Board" means the mental disabilities board of visitors created by this act.

(2) "Community-based facilities" or "community-based services" include those services and facilities which are available for the evaluation, treatment and habilitation of the developmentally disabled in a community setting, including but not limited to, outpatient facilities, special education services, group homes, foster homes, day care facilities, sheltered workshops, and other community-based services and facilities.

(3) "Court" means the district court of the state of Montana.

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism or any other neurologically handicapping ~~conditions~~ CONDITION closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and

REFERENCE BILL

environment and to raise the level of his physical, mental and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(6) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(7) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of developmental disabilities and certified by the ~~regional mental health director, if the director is a licensed physician, by a member of the regional developmental disabilities council or board of directors, if such member is a licensed physician, or by the superintendent of the Boulder River School and Hospital or of the Eastmont Training Center, if the superintendent is a licensed physician~~ DEPARTMENT OF INSTITUTIONS OR THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES IN ACCORDANCE WITH STANDARDS OF PROFESSIONAL LICENSING BOARDS, FEDERAL REGULATIONS, AND THE JOINT COMMISSIONS ON ACCREDITATION OF HOSPITALS.

(8) "Resident" means a person admitted to a residential facility for a course or evaluation, treatment or habilitation.

(9) "Residential facility" or "facility" means any residential hospital or hospital and school which exists for

the purpose of evaluating, treating and habilitating the developmentally disabled on an inpatient basis, including the Boulder River School and Hospital and the Eastmont Training Center. The term does not include a group home or foster home or a halfway house. A correctional facility or a facility for the treatment of the mentally ill shall not be a "residential facility" within the meaning of this act.

(10) "Respondent" means a person alleged in a petition filed pursuant to this act to be developmentally disabled and in need of developmental disabilities services.

(11) "Responsible person" means any person willing and able to assume responsibility for a person who is developmentally disabled or alleged to be developmentally disabled. Whenever, in any proceeding under this act, the court believes that a conflict of interest may exist between a person who is developmentally disabled or alleged to be developmentally disabled and his parents or guardian, or that the parents or guardian are unable to protect the interests of such person, or whenever there is no parent or guardian, the court shall appoint a responsible person to protect the interests of the person who is developmentally disabled or alleged to be developmentally disabled. Only one person shall at any one time be the responsible person within the meaning of this act. In appointing a responsible person, the court shall consider the preference of the

respondent or patient. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(12) "Seriously developmentally disabled" means developmentally disabled ~~and functioning at more than three standard deviations below the mean on a standardized intelligence test such as the Stanford Binet Scale and on a measure of adaptive behavior such as the American Association on Mental Deficiency Adaptive Behavior Scale, or because of some combination of developmental and physical disability,~~ DUE TO DEVELOPMENTAL OR PHYSICAL DISABILITY OR A COMBINATION OF BOTH RENDERING A PERSON unable to function in a community-based setting.

Section 3. (1) Any person subject to emergency admittance to a residential facility, to examination or evaluation by a professional person, or to any hearing held pursuant to this act shall have all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of the seriously mentally ill.

(2) In addition, the parents or guardian of any person alleged to be developmentally disabled and in need of developmental disabilities services have the right:

(a) to be present at any hearings held pursuant to this act;

(b) to be represented by counsel in any hearing;

(c) to offer evidence and cross-examine witnesses in any hearing; and

(d) to have the respondent be examined by a professional person of their choice when such professional person is reasonably available, unless the person so chosen is objected to by the respondent or by a responsible person appointed by the court.

(3) A person may waive his procedural rights provided that the waiver is knowingly and intentionally made. The right to counsel in a hearing held pursuant to section 6 may not be waived. The right to habilitation provided for in this act may not be waived.

(4) In the case of a person who has been admitted to a residential facility for up to thirty (30) days of evaluation and treatment, or who, pursuant to the recommendation of a professional person, may be admitted to a residential facility for an extended course of habilitation, a waiver of rights can be knowingly and intentionally made only with the concurrence of the person's counsel, if any, his parents or guardian, and the responsible person appointed by the court, if any.

(5) In the case of a minor, the waiver of rights can be knowingly and intentionally made:

(a) when the minor is under the age of twelve (12), by

the parents of the minor WITH THE CONCURRENCE OF THE RESPONSIBLE PERSON, IF ANY;

(b) when the minor is over the age of twelve (12), by the minor and his parents;

(c) when the minor is over the age of twelve (12) and the minor and his parents do not agree, the minor can make an effective waiver of his rights only with the advice of counsel.

If the court believes that there may be a conflict of interest between a minor and his parents or guardian, the court may appoint a responsible person or guardian ad litem for the minor.

Section 4. (1) The parents or guardian of any person alleged to be developmentally disabled or the person himself may at any time request the assistance of a professional person in determining whether the person is developmentally disabled, the extent of such disability, and the most appropriate course of treatment, habilitation and education for the person alleged to be developmentally disabled.

(2) Whenever the parents or guardian of a person alleged to be developmentally disabled or the person himself request a course of evaluation and treatment, they shall ascertain, with the professional person who undertakes the case, the least restrictive means of evaluating and treating the person alleged to be developmentally disabled.

Evaluation and treatment in a residential facility shall take place only upon certification by the professional person in charge of the case that adequate community-based facilities are not available REASONABLY NEAR THE PLACE OF RESIDENCE OF THE PERSON ALLEGED TO BE DEVELOPMENTALLY DISABLED. Residential evaluation and treatment shall not be for more than thirty (30) days without subsequent proceedings before the court.

Section 5. (1) Any person who believes that there is a person who is developmentally disabled and in need of developmental disability services may report the situation to a professional person. If the professional person believes from the facts given to him that the person may be developmentally disabled and in need of developmental disability services, he shall contact the parents or guardian of the person alleged to be developmentally disabled or the person himself. If any of the persons so contacted refuse to cooperate with the professional person and if the professional person believes from all the circumstances of the case that the person may be developmentally disabled and in need of developmental disabilities services he shall request the county attorney to file a petition alleging that there is a person in the county who is developmentally disabled and in need of developmental disabilities services.

(2) The petition shall contain the name and address of:

(a) the professional person and any other person requesting the petition, and their interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent, and of any other person believed to be legally responsible for the care, support and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person whom the county attorney believes might be willing and able to be appointed responsible person; and

(f) a statement of the rights of the respondent and his parents or guardian which shall be in conspicuous print and identified by a suitable heading.

(3) Upon presentation to the court by the county attorney, the court shall immediately consider the petition with or without a hearing to determine if there is probable cause to believe that the respondent is developmentally disabled and in need of evaluation and treatment. If the court finds no such probable cause it shall dismiss the petition. If the court finds that probable cause does exist it shall direct a professional person to examine the

respondent and to make an inquiry concerning the circumstances of the case. Such examination shall not exceed four (4) hours in length. If probable cause is found the court may appoint a responsible person other than the respondent's parents or guardian to protect the interests of the respondent. The responsible person shall be notified as soon as possible that a petition has been filed. Notice of the petition and the finding of probable cause shall be mailed or delivered to the respondent and to all other persons named in the petition and to any person who would have been named in the petition had his name, address, and relationship to the respondent been known at the time.

(4) When the professional person first contacts the respondent, before he begins any examination, he shall give the respondent a copy of the petition and explain to the respondent the nature of the proceeding and his rights as set forth in the petition. If the respondent is incapable of understanding the explanation and proceeding, the professional person shall give the petition and make the explanation to the parents or guardian of the respondent. Before making any inquiry of the parents or guardian of the respondent, the professional person shall give them a copy of the petition, explain the nature of the proceeding and their rights as set forth in the petition.

Section 6. (1) If the professional person, based on

his examination and inquiry determines that the respondent is not developmentally disabled or is not in need of developmental disability services, he shall report this finding in writing to the court and the petition shall be dismissed. If the professional person concludes that the respondent is developmentally disabled and in need of developmental disability services, he shall report this conclusion to the court in writing together with his recommendations for evaluation and treatment. The report shall include an explanation of the basis on which the professional person has reached his conclusion and shall include a description of any tests or evaluation devices he has employed. If the professional person's recommendation is for further evaluation and treatment, notice of this recommendation shall be sent to the respondent, his parents or guardian, the next of kin, the responsible person appointed by the court, if any, any attorney representing the respondent or his parents or guardian. If no responsible person has yet been appointed, the court may appoint one at this time.

(2) If the respondent, his parents or guardian, the responsible person, if any, or counsel for any party requests a hearing on the recommendation, the court shall set a time and place for hearing. The hearing shall be before the court without a jury. The rules of civil

procedure shall apply.

(3) Prior to any hearing held pursuant to this section, the court shall appoint counsel to represent the respondent, if the respondent has not retained independent counsel. The parents or guardian shall be informed of their right to counsel and if they are indigent the court shall, on their request, appoint counsel for them. In no case shall the same attorney represent the respondent and his parents or guardian.

(4) If the hearing is waived or if the court finds, after hearing, that the respondent is developmentally disabled and in need of further evaluation and treatment, the court shall order that the respondent undergo such evaluation and treatment. Evaluation and treatment ordered pursuant to this subsection shall be for no more than thirty (30) days. It shall take place in the least restrictive environment in which the necessary evaluation and treatment can be accomplished. Evaluation and treatment in a residential facility shall be ordered only if the necessary evaluation and treatment cannot be accomplished through the use of community-based facilities.

Section 7. (1) If as a result of the evaluation and treatment ordered by the court, the professional person in charge of the case recommends a course of habilitation and treatment at the community level making use of community and

regional based services for the developmentally disabled, he shall report his recommendation in writing to the court. The recommendation shall be accompanied by a written report indicating the factual basis for the recommendation and describing any tests or evaluation devices which the professional person has employed in evaluating the respondent. If this course of treatment and habilitation is agreed to by the parents, guardian, person evaluated, responsible person, if any, and counsel for the person evaluated, if any, then this community-based course of treatment shall be commenced as soon as practicable, and the petition shall be dismissed.

(2) If any of the parties listed in the preceeding paragraph object to the community-based course of treatment, they may request the court to conduct a hearing on the matter. If a responsible person has not yet been appointed, the court may appoint a responsible person prior to the hearing. Notice of the time, date and place of the hearing shall be mailed or delivered to all of the parties listed in the preceding paragraph, and to the attorney for the parents or guardian, if any. The hearing shall be held before the court without a jury. The rules of civil procedure shall apply. If the court finds that the respondent is developmentally disabled and in need of community-based developmental disabilities services, it shall order that the

respondent undertake a community-based course of treatment and habilitation.

Section 8. (1) If as a result of the evaluation and treatment either agreed to by the parents, guardian, or the person himself pursuant to section 4 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation, and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian the court shall appoint a responsible person. At the request of the respondent, his parents or guardian or the responsible person, the court shall appoint counsel for the respondent. If the parents or guardian are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent,

if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time and place of the hearing to each of the parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based services are not adequate, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, and in need of developmental disabilities services but that available community-based services are adequate, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

(4) If none of the parties notified of the recommendation request a hearing, the court may issue an order authorizing the person to be admitted to the

residential facility for an extended period of treatment and habilitation, or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse to authorize admission of a person to a residential facility for an extended period of treatment and habilitation if such admission is not in the best interests of the person.

(5) If any person is admitted to a residential facility for an extended course of habilitation without a hearing, and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative, if it is a community-based alternative, or transfer the resident to the alternative, if it is a residential alternative. Any such transfer or release shall comply with the requirements of section 9. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in subsection (2) of this section.

Section 9. (1) No person shall be admitted to a

residential facility for longer than thirty (30) days except on approval of the court. Whenever a person is admitted to a residential facility for longer than thirty (30) days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is admitted to the residential facility. In no case shall this maximum period exceed one year.

(3) If at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and treatment, the professional person in charge of the resident decides that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident, or that it is in the best interests of the resident that he be transferred to another residential facility, then he may release the resident to such community-based alternative or transfer the resident to the other residential facility no less than fifteen (15) days after sending notice of the proposed release or transfer to the resident, his parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the

court, if any, and the court which ordered the admission. If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing shall comply with the procedures set forth in section 8. The court may on its own initiative inquire concerning the propriety of the release or transfer. Nothing in this subsection shall prevent the transfer of a resident to a hospital or other medical facility for necessary medical treatment, or emergency transfer of a resident to a mental health facility, provided such emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within twenty-four (24) hours of an emergency medical or psychiatric transfer, notice shall be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(4) If the professional person in charge of the resident determines that the admission to the residential facility should continue beyond the period specified in the court order, he shall, at least fifteen (15) days before the end of the period set out in the court order, send written notice of his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney

who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the future habilitation plan which is anticipated by the professional person.

(5) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner set out in section 8. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based habilitation, or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition. If the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a residential facility which does not have an individualized habilitation plan for the resident. In its

order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility.

Section 10. Hearings held pursuant to this act shall be held in the district court for the district where the respondent resides. Except that at the request of any party, or the professional person who must be present at the hearing, a hearing may be held in the district court for the district where the respondent is undergoing evaluation, treatment or habilitation in a residential facility, or is undergoing community-based evaluation, treatment or habilitation. The cost of any hearing held pursuant to this act shall be born by the county where the respondent resides.

Section 11. Any order issued by a court after a hearing held pursuant to any provision of this act may be appealed to the Montana supreme court in the same manner as for civil appeals generally.

Section 12. Whenever evaluation by a professional person is ordered by a court pursuant to any provision of this act, the person being evaluated, his parents or guardian shall have a reasonable choice of a professional person qualified to perform such service.

Section 13. In any hearing held pursuant to this act

which involves consideration of the recommendation and report of a professional person, the professional person who made the recommendation and report shall be present at the hearing and subject to cross-examination.

Section 14. In any hearing held pursuant to this act the court may request the county welfare department to prepare a social summary of the respondent for use by the court.

Section 15. No person who has reached the age of majority shall be compelled against his will to undertake a course of treatment and habilitation solely because he is developmentally disabled, but only if such disability causes him to be unable to protect his life and health.

Section 16. The parents, guardian, the person himself, or a professional person may admit a person believed to be developmentally disabled to a residential facility on an emergency basis when necessary to protect the person from death or serious bodily harm. However, if requested by the parents, guardian or the person admitted on an emergency basis, a petition as set out in section 5 shall be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the professional person assigned by the court to conduct the examination and inquiry shall report back to the court on the next judicial day following the filing of the petition.

Once a petition is filed, continued detention in the residential facility shall be allowed only on order of the court when necessary to protect the respondent from death or serious bodily harm. In no case shall an emergency admission to a residential facility continue for longer than thirty (30) days without subsequent proceedings before the court.

Section 17. (1) Unless specifically stated in an order by the court, a person admitted to a residential facility for an extended course of habilitation shall not forfeit any legal right or suffer any legal disability by reason of the provisions of this act except insofar as it may be necessary to detain the person for habilitation, evaluation or care.

(2) Whenever any person is admitted to a residential facility for a period of more than thirty (30) days, for an extended course of habilitation, the court ordering the admission may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section shall terminate upon the conclusion of the admission if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period

of the admission may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) Any person who has been admitted to a residential facility pursuant to this act shall be automatically restored upon the termination of the admission to all of his civil and legal rights which may have been lost when he was admitted. This subsection shall not affect, however, any guardianship or conservatorship created independently of the admission proceedings, according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Any person who leaves a residential facility following a period of evaluation and habilitation shall be given a written statement setting forth the substance of this subsection.

(4) Any person admitted to a residential facility prior to the effective date of this act shall enjoy all the rights and privileges of a person admitted after the effective date of this act.

Section 18. (1) If a person is admitted to a residential facility under the provisions of this act and is eligible for hospital care, treatment or habilitation by an agency of the United States, and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or

treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or residential facility operated by the agency and in which the person is admitted shall, with respect to the person, be vested with the same powers as the superintendent of the Boulder River school and hospital with respect to detention, custody, transfer and release of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so admitted, and to determine the necessity for continuance of their admission.

(2) Consistent with other provisions of this act, a person admitted to a residential facility under this act for a period more than thirty (30) days may be committed by the court to the custody of friends or next of kin residing outside the state or transferred to a residential facility located outside the state, if the out-of-state facility agrees to receive the person, provided, however that no such commitment or transfer shall be for a longer period of time than is permitted within the state. If the person is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer of persons admitted to a residential

facility under the provisions of this act out of Montana or under the laws of another jurisdiction into Montana shall be governed by the provisions of the interstate compact on mental health.

Section 19. No person admitted to or in a residential facility shall be fingerprinted unless required by other provisions of law.

Section 20. (1) A person admitted to a residential facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical OR NONHABILITATIVE photographs shall be taken or used without consent of the resident's parents or guardian or the responsible person appointed by the court.

Section 21. Persons admitted to a residential facility for a period of habilitation shall enjoy the following rights:

(1) Residents shall have a right to dignity, privacy and humane care.

(2) Residents shall be entitled to send and receive sealed mail. Moreover, it shall be the duty of the facility to foster the exercise of this right by furnishing the

necessary materials and assistance.

(3) Residents shall have the same rights and access to private telephone communication as patients at any public hospital, except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed ~~semiannually~~ MONTHLY if any restrictions are to be continued. Residents shall have an unrestricted right to visitation, except to the extent that a professional person responsible for formulation of a particular resident's habilitation plan writes an order imposing special restrictions and explains the reasons for any such restrictions. The written order must be renewed ~~semiannually~~ MONTHLY if any restrictions are to be continued.

(4) Residents shall have a right to receive suitable educational services regardless of chronological age, degree of retardation or accompanying disabilities or handicaps.

(5) Each resident shall have an adequate allowance of neat, clean, suitably fitting and seasonable clothing. Except when a particular kind of clothing is required because of a particular condition, residents shall have the opportunity to select from various types of neat, clean, and

seasonable clothing. Such clothing shall be considered the resident's throughout his stay in the institution. Clothing both in amount and type shall make it possible for residents to go out of doors in inclement weather, to go for trips or visits appropriately dressed, and to make a normal appearance in the community. The facility shall make provision for the adequate and regular laundering of the residents' clothing.

(6) Each resident shall have the right to keep and use his own personal possessions except insofar as such clothes or personal possessions may be determined to be dangerous, either to himself or to others, by a professional person.

(7) A resident has a right to a humane physical environment within the residential facilities. These facilities shall be designed to make a positive contribution to the efficient attainment of the habilitation goals of the resident. To accomplish this purpose:

(a) Regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean and attractive condition shall be developed and implemented.

(b) Pursuant to an established routine maintenance and repair program, the physical plant shall be kept in a continuous state of good repair and operation so as to ensure the health, comfort, safety and well-being of the

residents and so as not to impede in any manner the habilitation programs of the residents.

(c) The physical facilities must meet all fire and safety standards established by the state and locality. In addition, the facility shall meet such provisions of the life safety code of the national fire protection association as are applicable to it.

(d) There must be special facilities for nonambulatory residents to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory residents to communicate their needs to staff.

(8) Residents shall have a right to receive prompt and adequate medical treatment for any physical ailments and for the prevention of any illness or disability. Such medical treatment shall meet standards of medical practice in the community.

(9) Corporal punishment shall not be permitted.

(10) The opportunity for religious worship shall be accorded to each resident who desires such worship. Provisions for religious worship shall be made available to all residents on a nondiscriminatory basis. No individual shall be compelled to engage in any religious activities.

(11) Residents shall have a right to a nourishing, well-balanced diet. The diet for residents shall provide at

a minimum the recommended daily dietary allowance as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the resident, or his parents or guardian or next of kin, or the responsible person appointed by the court, in accordance with the religious requirements of any resident's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(12) Residents shall have a right to regular physical exercise several times a week. It shall be the duty of the facility to provide both indoor and outdoor facilities and equipment for such exercise. Residents shall have a right to be outdoors daily in the absence of contrary medical considerations.

(13) Residents shall have a right, under appropriate supervision, to suitable opportunities for the interaction with members of the opposite sex, except where a professional person responsible for the formulation of a particular resident's habilitation plan writes an order to the contrary and explains the reasons therefor. THE ORDER MUST BE RENEWED MONTHLY IF THE RESTRICTION IS TO BE CONTINUED.

Section 22. (1) Persons admitted to residential facilities shall have a right to habilitation, including medical treatment, education and care, suited to their

needs, regardless of age, degree of retardation or handicapping condition. Each resident has a right to a habilitation program which will maximize his human abilities and enhance his ability to cope with his environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and realize his fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents shall have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

(a) more to less structured living;

(b) larger to smaller facilities;

(c) larger to smaller living units;

(d) group to individual residence;

(e) segregated from the community to integrated into the community living;

(f) dependent to independent living.

(3) Within ~~fourteen (14)~~ THIRTY (30) days of his admission to a residential facility, each resident shall have an evaluation by appropriate specialists for programming purposes.

(4) Each resident shall have an individualized

habilitation plan formulated by the facility. This plan shall be developed by appropriate professional persons and implemented as soon as possible but no later than fourteen (14) days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this act, shall commence promptly upon the resident's admission. Each individualized habilitation plan shall contain:

(a) a statement of the nature of the specific limitations and specific needs of the resident;

(b) a description of intermediate and long-range habilitation goals with a projected timetable for their attainment;

(c) a statement of, and an explanation for, the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professional persons and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, including criteria for discharge and a projected date for discharge.

(5) As part of his habilitation plan, each resident shall have an individualized post-institutionalization plan. This plan shall be developed by a professional person who shall begin preparation of such plan upon the resident's admission to the institution and shall complete such plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, shall be consulted in the development of such plan and shall be informed of the content of such plan.

(6) In the interests of continuity of care, one professional person shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. This professional person shall also be responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan shall be continuously reviewed by the professional person responsible for supervising the implementation of the plan and shall be modified if necessary. In addition, six months after admission and at least annually thereafter, each resident shall receive a comprehensive psychological, social, educational and medical diagnosis and evaluation, and his

habilitation plan shall be reviewed by an interdisciplinary team of no less than two (2) professional persons and such resident care workers as are directly involved in his habilitation and care. A HABILITATION PLAN SHALL BE REVIEWED MONTHLY.

(8) Each resident discharged to the community shall have a program of transitional habilitation assistance.

(9) The professional person in charge of the residential facility shall report in writing to the parents or guardian of the resident, or the responsible person, at least every six (6) months on the resident's educational, vocational and living skills progress and medical condition. Such report shall also state any appropriate habilitation program which has not been afforded to the resident because of inadequate habilitation resources.

(10) The parents or guardian of each resident, or the responsible person appointed by the court, shall promptly upon resident's admission receive a written copy of all the above standards for adequate habilitation. Each resident, if the resident is able to comprehend, shall promptly upon his admission be orally informed in clear language of the above standards and, where appropriate, be provided with a written copy.

Section 23. Complete records for each resident shall be maintained and shall be readily available to professional

persons and to the resident care workers who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records shall be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if such resident is capable of giving informed consent, or by his parents or guardian or the responsible person, shall be permitted access to the resident's records. These records shall include:

(1) identification data, including the resident's legal status;

(2) the resident's history, including but not limited to:

(a) family data, educational background, and employment record;

(b) prior medical history, both physical and mental, including prior institutionalization;

(3) the resident's grievances if any;

(4) an inventory of the resident's life skills;

(5) a record of each physical examination which describes the results of the examination;

(6) a copy of the individual habilitation plan and any modifications thereto and an appropriate summary which will

guide and assist the resident care workers in implementing the resident's program;

(7) the findings made in periodic reviews of the habilitation plan which findings shall include an analysis of the successes and failures of the habilitation program and shall direct whatever modifications are necessary;

(8) a copy of the post-institutionalization plan and any modifications thereto, and a summary of the steps that have been taken to implement that plan;

(9) a medication history and status;

(10) a summary of each significant contact by a professional person with a resident;

(11) a summary of the resident's response to his program, prepared by a professional person involved in the resident's habilitation and recorded at least monthly. Such response, wherever possible, shall be scientifically documented.

(12) a monthly summary of the extent and nature of the resident's work activities and the effect of such activity upon the resident's progress along the habilitation plan;

(13) a signed order by a professional person for any physical restraints;

(14) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the

incident or accident or other source of information, including any reports of investigations of resident's mistreatment;

(15) a summary of family visits and contacts;

(16) a summary of attendance and leaves from the facility;

(17) a record of any seizures, illnesses, treatments thereof, and immunizations.

Section 24. ~~Each professional person employed by a residential facility shall meet all licensing and certification requirements promulgated by the state of Montana for persons engaged in private practice of the same profession elsewhere in Montana. Other staff members shall meet the same licensing and certification requirements as persons who engage in private practice of their specialty elsewhere in Montana.~~ All resident care workers who have not had prior clinical experience in a residential facility for habilitation of the developmentally disabled shall have suitable orientation training. Staff members on all levels shall have suitable, regularly scheduled in-service training. Each resident care worker shall be under the direct professional supervision of a ~~qualified staff member~~ PROFESSIONAL PERSON.

Section 25. Every residential facility shall prohibit mistreatment, neglect or abuse in any form of any resident.

Alleged violations shall be reported immediately to the professional person in charge of the facility and there shall be a written record that:

(1) each alleged violation has been thoroughly investigated and findings stated;

(2) the results of such investigation are reported to the professional person in charge of the facility within twenty-four (24) hours of the report of the incident. Such reports shall also be made to the mental disabilities board of visitors monthly and to the developmental disabilities advisory council at its next scheduled public meeting. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members.

SECTION 26. MEDICATION FOR RESIDENTS. RESIDENTS HAVE A RIGHT TO BE FREE FROM UNNECESSARY OR EXCESSIVE MEDICATION. NO MEDICATION SHALL BE ADMINISTERED UNLESS AT THE WRITTEN ORDER OF A PHYSICIAN. THE PROFESSIONAL PERSON IN CHARGE OF THE FACILITY AND THE ATTENDING PHYSICIAN SHALL BE RESPONSIBLE FOR ALL MEDICATION GIVEN OR ADMINISTERED TO A RESIDENT. THE USE OF MEDICATION SHALL NOT EXCEED STANDARDS OF USE THAT ARE ADVOCATED BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION. NOTATION OF EACH INDIVIDUAL'S MEDICATION SHALL BE KEPT IN HIS MEDICAL RECORDS. AT LEAST WEEKLY AN ATTENDING PHYSICIAN SHALL REVIEW THE DRUG REGIMEN OF EACH

PATIENT UNDER HIS CARE. ALL PRESCRIPTIONS SHALL BE WRITTEN WITH A TERMINATION DATE, WHICH SHALL NOT EXCEED THIRTY (30) DAYS. MEDICATIONS SHALL NOT BE USED AS PUNISHMENT, FOR THE CONVENIENCE OF STAFF, AS A SUBSTITUTE FOR PROGRAM, OR IN QUANTITIES THAT INTERFERE WITH THE RESIDENT'S TREATMENT PROGRAM.

Section 27. (1) Residents of a residential facility shall have a right not to be subjected to any unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent specialists and legal counsel. Such proposed procedures shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought.

(2) Physical restraint shall be employed only when absolutely necessary to protect the resident from injury to himself or to prevent injury to others. Restraint shall not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint shall be applied only if alternative techniques have failed and only if such restraint imposes the least possible restriction consistent with its purpose. Only a professional person may authorize the use of restraints.

Orders for restraints by a professional person shall be in writing and shall not be in force for longer than twelve (12) hours. Whenever physical restraint is ordered suitable provision shall be made for the comfort and physical needs of the person restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room FOR NON-THERAPEUTIC PURPOSES, shall not be employed. Legitimate "time out" procedures may be utilized under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli shall be reviewed and approved by the mental disabilities board of visitors and shall be conducted only with the express and informed consent of the affected resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court, after opportunities for consultation with independent specialists and with legal counsel. Such behavior modification programs shall be conducted only under the supervision of and in the presence of a professional person who has had proper training in such techniques.

(5) ~~No resident shall be subjected to a behavior modification program designed to eliminate a particular pattern of behavior without prior certification by a~~

~~physician that he has examined the resident in regard to behavior to be extinguished and finds that such behavior is not caused by a physical condition which could be corrected by appropriate medical procedures.~~ No resident shall be subjected to a behavior modification program which attempts to extinguish socially appropriate behavior or to develop new behavior patterns when such behavior modifications serve only institutional convenience.

(6) Electric shock devices shall be considered a research technique for the purpose of this act. Such devices shall only be used in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of such devices shall be subject to the conditions prescribed by this act for experimental research generally and shall be used only under the direct and specific order of the professional person in charge of the residential facility.

Section 28. Residents of a residential facility shall have a right not to be subjected to experimental research without the express and informed consent of the resident, if the resident is able to give such consent, and of his parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. Such

proposed research shall first have been reviewed and approved by the mental disabilities board of visitors before such consent shall be sought. Prior to such approval the board shall determine that such research complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare for projects supported by that agency.

Section 29. The following rules shall govern resident labor:

(1) No resident shall be required to perform labor which involves the operation and maintenance of the facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Residents may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(2) No resident shall be involved in the care (feeding, clothing, bathing), training or supervision of other residents unless he:

(a) has volunteered;

(b) has been specifically trained in the necessary

skills;

(c) has the humane judgment required for such activities;

(d) is adequately supervised; and

(e) is reimbursed in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(3) Residents may be required to perform vocational training tasks which do not involve the operation and maintenance of the facility, subject to a presumption that an assignment of longer than three months to any task is not a training task, provided the specific task or any change in task assignment is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity.

(4) Residents may voluntarily engage in habilitative labor at nonprogram hours for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor is:

(a) an integrated part of the resident's habilitation plan and approved as a habilitation activity by a

professional person responsible for supervising the resident's habilitation;

(b) supervised by a staff member to oversee the habilitation aspects of the activity; and

(c) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as amended.

(5) If any resident performs habilitative labor which involves the operation and maintenance of a facility, but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(6) Residents may be required to perform tasks of a personal housekeeping nature such as the making of one's own bed.

(7) ~~Residents shall be allowed to use~~ DEDUCTIONS OR PAYMENTS FOR CARE AND OTHER CHARGES SHALL NOT DEPRIVE A RESIDENT OF a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

(8) Staffing shall be sufficient so that the facility

is not dependent upon the use of residents or volunteers for the care, maintenance or habilitation of other residents or for income-producing services. The facility shall formulate a written policy to protect the residents from exploitation when they are engaged in productive work.

Section 30. Within one (1) year of the effective date of this act, each resident governed by the provisions of this act shall be evaluated as to his mental, emotional, social, and physical condition. Such evaluation or reevaluation shall be conducted by an interdisciplinary team of professional persons who shall use professionally recognized tests and examination procedures. Each resident's parents or guardian, next of kin or legal representative or the responsible person appointed by the court shall be contacted and his readiness to make provisions for the resident's care in the community shall be ascertained. Each resident shall be returned to his family, if adequately habilitated, or assigned to the least restrictive habilitation setting. Where necessary, the professional person in charge of the resident shall petition the court to appoint a responsible person.

Section 31. No person shall be admitted to any publicly supported residential institution caring for developmentally disabled persons unless such institution meets the standards prescribed by this act.

Section 32. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five (5) persons at least three (3) of whom shall not be professional persons and at least one (1) of whom shall be a representative of an organization concerned with the care and welfare of the developmentally disabled. No one may be a member of the board who is an agent or employee of the department of institutions or of any residential facility affected by this act. If a board of similar title and structure is created in any act concerning the treatment of the mentally ill, then one (1) board shall be created to perform the functions set out in both acts and the board so created shall include at least one (1) representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this act.

The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the

research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare. No experimental research project involving persons admitted to any residential facility affected by this act shall be commenced unless it is approved by the mental disabilities board of visitors. The board shall investigate all cases of alleged mistreatment of a resident.

(3) The board shall, at least annually, inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(4) The board shall inspect the file of each person admitted to a residential facility pursuant to this act to insure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation or other extraordinary measures.

(5) The board may assist any patient at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(6) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the parents or guardian of any patient involved, the next of kin, if known, the responsible person appointed by the court for any patient involved, the professional person in charge of the facility, the director of the department of institutions and the district court which has jurisdiction over the facility.

(7) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the Montana legislature concerning the status of the residential facilities and habilitation programs which it has inspected.

(8) The mental disabilities board of visitors shall be attached to the governor for administrative purposes. It may employ staff for the purpose of carrying out its duties as set out in this act.

Section 33. If any person is a patient in a mental health facility and the professional person in charge of the patient determines that the patient is suffering from a

developmental disability rather than mental illness and should more properly be admitted to a residential facility, then the professional person shall commence proceedings consistent with the procedures set forth in this act for admissions generally to effect such admission.

Section 34. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

~~Section 34. Section 80-2312, R.C.M. 1947, is amended to read as follows:~~

~~"80-2312. Supervision of Glendive center -- transfers to Boulder river school and hospital. The department shall establish and direct the services to be provided at the center. The department shall provide for temporary transfers from the Eastmont training center to the Boulder river school and hospital for special medical, psychological, surgical, and other services consistent with the statutory requirements for transfer of a resident to a different residential facility.~~"

Section 35. Sections 80-2303 through 80-2309, 80-2312, AND 38-301 through 38-303, R.C.M. 1947, are repealed.

-End-